

D.B. CIVIL SPECIAL APPEAL (W) NO.621 /2007  
The State of Rajasthan & Ors. Vs. Mahaveer Singh.

Date : 04.05.2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA  
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. L.R. Upadhyay, Dy. Government Advocate.  
Mr. Mahesh Bora for the respondent.

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We have heard learned counsel for the parties on  
merit of the case.

The facts of the case which need to be noticed for the present purposes and about which there is no dispute are that the respondent-petitioner while serving under the Police Department of the State was facing trial under Section 5 of the Prevention of Corruption Act. However, right from 1983 he continued under suspension and was only receiving subsistence allowances. Vide order dated 28.11.2000, the petitioner was compulsorily retired under Rule 53(1) of the Rajasthan Civil Service (Pension) Rules, 1996. Rule 53(1) of the Rajasthan Civil Service (Pension) Rules, 1996 corresponding to Rule 244(2) of the Rajasthan Service Rules 1951 until it was repealed and reenacted under the Pension Rules envisages normal retiral benefits to follow and compulsory retirement under it. However, no retiral benefits

were offered to the petitioner on the ground that criminal trial is pending against him.

Vide order dated 20th August, 2001, the petitioner was acquitted of the charges in the criminal trial by the trial court. This led to filing of the writ petition No.2979/2005 when the petitioner did not get retiral benefits or the full emoluments inclusive of increments for the period during which he had remained under suspension. The petitioner's case was that since he was compulsorily retired under Rule 53(1), he was entitled to retiral benefits which could not have been stopped merely on the basis of criminal trial and particularly after acquittal, he was entitled to retiral benefits without any impediment. He also urged that when the order of compulsory retirement came into force and on his acquittal, he was entitled to benefit of his full emoluments for the period during which he remained under suspension.

The appellants' plea before the learned Single Judge was that since the State has preferred an appeal against the order of acquittal which is pending in the High Court, the appellants are entitled to withdraw the pensionary benefits and would make available the same to the petitioner on his retirement along with the benefit of increments and full

emoluments during the period of suspension.

The learned Single Judge has not sustained the plea of the appellants and had allowed the writ petition. Hence, this appeal.

There are two parts of the claim of the petitioner-respondent. Firstly, his claim to retiral benefits and secondly his claim to full emoluments for the period during which he had remained under suspension while in service. Both are governed by separate set of rules and must be considered independently.

So far as his retiral benefits due to a government servant are concerned, the two provisions are relevant for the present purpose, which should be noticed. The petitioner has been retired under Rule 53(1) of the Rules of 1996 which inter alia provides that any time after a Government servant had completed 15 years qualifying period or had attained 45 years of age, whichever is earlier, he may be required by appointing authority to retire in public interest and in the case of such requirement, the Government servant shall be entitled to receive pension. Thus, under Rule 53(1), the entitlement of the incumbent to the retiring pension is a part of statutory rule

inasmuch as there is no other rule, by which this benefit can be denied, the petitioner is entitled to the retiral benefits on his retirement, the suspension having ceased to continue after retirement. A person after retiring cannot continue to be in the status of a suspended employee. The rule 7(1) and 7(4) of Rajasthan Service Rules, have been brought to our notice, under which the State is enable to withhold or withdraw pension, which read as under:-

“(1) The Governor reverses to himself the right of withhold or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if in any departmental or judicial proceedings, the pension is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement;

(2) ....

(3) ....

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub rule (2), a provisional pension as provided in Rule 90 shall be sanctioned.”

A perusal of Rule 7(1) and 7(4) shows that merely because of pendency of departmental enquiry or judicial proceedings against an incumbent, on being compulsory retired he cannot be denied the benefits to which incumbent is entitled to under Rule 90. Rule 7(1) is clear in its terms that the pension of the retired employee could be withheld or withdrawn only in case he is found guilty of gross misconduct or negligent during the period of services through a departmental enquiry or judicial proceedings. There is no dispute that until now there is no such finding of misconduct having been reached against the respondent petitioner in any departmental enquiry and as on today he stand acquitted from criminal charge in a judicial proceedings. Therefore, entitlement to provisional pension under Rule 90 during the pendency of the appeal before the High Court cannot be denied by the appellants to the respondent. To that extent, the petitioner is entitled to claim provisional pension in terms of Rule 90 of Rules of 1996.

So far as the emoluments during the period of suspension are concerned, the same are governed by Rule 54 of the Rajasthan Service Rules which provides for dealing with the situation where the suspended Government servant is reinstated or becomes entitle to reinstatement. It inter alia

provides that if the Government servant, who has been suspended, is reinstated or would have been reinstated but for his retirement while under suspension, the authority concerned to order the reinstatement shall consider and make a specific order about the pay and allowance to be paid to the incumbent for the period during which he had remained under suspension.

Apparently, since the judicial proceedings are still pending against the respondent-petitioner in relation to grave misconduct, by way of appeal before this Court the stage of considering whether the petitioner would have been reinstated for the purpose of passing order under Rule 54 has not reached, therefore, at present the petitioner cannot be held entitled to any relief for the period during which he had remained under suspension.

Accordingly, this appeal is partly allowed.

No costs.

[BHANWAROO KHAN], J.

[ RAJESH BALIA ], J.

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D.B. CIVIL SPECIAL APPEAL (W) NO.DR(J)1797/2006  
The State of Rajasthan & Ors. Vs. Mahaveer Singh.

Date : 04.05.2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA  
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. L.R. Upadhyay, Dy. Government Advocate.  
Mr. Mahesh Bora for the respondent.

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Having heard learned counsel for the parties we are satisfied that the appellant was prevented by sufficient cause from filing the appeal within limitation. Accordingly, the application under Section 5 of Limitation Act is allowed. The delay in filing the appeal is condoned. The appeal may now be registered.

[BHANWAROO KHAN], J.

[ RAJESH BALIA ], J.

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